

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2007 FEB 23 PM 12:23

CLERK OF COURT

DOROTHY BROWN, INDIVIDUALLY;
PAUL D'ANTUONO AS PERSONAL OF
THE ESTATE OF LINDA FENTON; AND
THE ESTATE OF LINDA FENTON

VS.

UNITED STATES OF AMERICA

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§
§
§
§

4-07-CV-123-Y

CAUSE NO.

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW Plaintiffs Dorothy Brown ("Brown"), individually and Paul D'Antuono ("D'Antuono"), as personal representative of the Estate of Linda Fenton ("Fenton"), deceased, and hereby state their claims against Defendant as follows:

I. INTRODUCTION

1. Plaintiffs file this action against the United States of America and the Bureau of Prisons (individually and collectively herein "Defendant") for compensatory damages and other just relief as a result of the death of Linda Fenton.

II. JURISDICTION

2. Jurisdiction of this matter is appropriate in the United States District Court for the Northern District of Texas - Fort Worth Division pursuant to 28 U.S.C. §1346(b) and (h). Further, the amount in controversy is within the jurisdictional limits of this Court. Plaintiffs have satisfied the administrative filing and notice requirements under the Federal Tort Claims Act ("FTCA"). Please see a true and correct copy of the denial of Brown's administrative claim attached hereto as Exhibit 1.

III. VENUE

3. Venue is appropriate in the United States District Court for the Northern District of Texas - Fort Worth Division, in that the Defendant has significant contacts with the District and Division, and the events that gave rise to this cause of action occurred in this District and Division. Accordingly, venue properly lies pursuant to 28 U.S.C. § 1391.

IV. PARTIES

4. Plaintiff Brown is a citizen and resident of Citrus County, Florida.

5. Plaintiff D'Antuono is the duly appointed personal representative of the Estate of Linda Fenton. Please see a true and correct copy of the Order appointing D'Antuono as the representative of the Estate of Linda Fenton attached hereto as Exhibit 2.

6. Defendant is the United States of America, and its agents, and may be served through (a) United States Attorney Richard Roper of the United States District Court for the Northern District of Texas - Fort Worth Division at the United States Attorney's Office for the Northern District of Texas, 801 Cherry Street, Suite 1700, Fort Worth, Texas 76102; (b) Attorney General Alberto Gonzales of the United States at Washington, District of Columbia at the United States Attorney's Office for the Northern District of Texas, 801 Cherry Street, Suite 1700, Fort Worth, Texas 76102, and the Office of the Attorney General, 5111 Main Justice Building, 10th Street and Constitutional Avenue NW, Washington D.C., 20530; and (c) Federal Bureau of Prisons, South Central Regional Office, 4211 Cedar Springs Road, Dallas, Texas 75219, pursuant to Federal Rule of Civil Procedure 4(i).

7. Defendant United States and its agents performed all of the acts and omissions complained of herein within the line and scope of their employment.

8. Defendant United States is liable for the torts and wrongful conduct of its agents and employees.

V. FACTUAL ALLEGATIONS

9. Plaintiffs incorporate the above-numbered paragraphs as if fully set forth herein.

10. At the time of her death, Fenton was an inmate at the federal prison at Federal Medical Center Carswell ("Carswell") on Carswell Air Force Base in Fort Worth, Texas, and was in the custody of the Federal Bureau of Prisons ("BOP").

11. Fenton, who had served almost seven years for a drug offense, was due to be released from the custody of the BOP on or about February 25, 2004.

12. On or about February 23, 2004, Fenton was placed on suicide watch by members of the Carswell medical staff and placed in an area of the prison facility known as the psychiatric ward, where she could be observed by the staff. At some point, Fenton was allegedly removed from suicide watch, but remained in the psychiatric ward, confined in an individual cell near the nurse's station.

13. At all times, the BOP had a duty to provide for Fenton's safekeeping, care, and protection. Further, BOP policy requires that any inmate threatening self-harm must be placed in a "suicide watch room" and kept under 24-hour observation, and the person observing the inmate must "have verbal communication with and constant observation of the suicidal inmate at all times."

14. At approximately 1:00 p.m. on February 23, 2004, Fenton was found in the individual psychiatric ward cell, unconscious and near death. After attempts at resuscitation by BOP staff, Fenton was taken to Osteopathic Medical Center of Texas in Fort Worth, where she never regained consciousness, although she was responsive to pain until her death, eight days later.

15. Osteopathic doctors estimated that Fenton was likely unconscious and in respiratory distress for 30 to 45 minutes before rescue attempts were made.

16. Contrary to the BOP's duty to Fenton, and as a result of the acts or omissions of the Defendant and its agents, Fenton died on March 2, 2004.

17. The doctors at Osteopathic were told by BOP employees that Fenton had attempted suicide. A pathologist hired by Fenton's family conducted an autopsy on Fenton and found a pattern of bruises on her arms, neck and wrists that were "consistent with the effects of a physical struggle," and that he believed Fenton's injuries were consistent with being placed in a choke hold.

VI. FEDERAL TORT CLAIMS ACT

18. Plaintiffs incorporate the above-numbered paragraphs as if fully set forth herein.

19. Plaintiffs file this action against the United States of America under the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and (h), 2671-80, for the injuries inflicted upon Fenton and the wrongful death of Fenton. The injuries inflicted on Plaintiffs were caused by the negligent or wrongful act or omission of employees of the United States, while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to Plaintiffs in accordance with the laws in the State of Texas, the place where the act or omission occurred. Further, the injuries sustained by Plaintiffs were caused solely by Defendant and its agents, without any negligence on the part of the Plaintiffs contributing thereto.

COUNT 1. **SURVIVAL ACTION**

20. Plaintiffs incorporate the above-numbered paragraphs as if fully set forth herein.

21. As a direct and proximate result of the wrongful or negligent conduct of the Defendant, Fenton suffered physical and mental injuries, economic losses, mental anguish, pain and

suffering and other nonpecuniary losses. Had Fenton survived, she would have been entitled to bring an action for her injuries.

22. This Count is brought pursuant to and is authorized by TEX. CIV. PRAC. & REM. CODE §§ 71.021 - 71.022.

23. WHEREFORE, the Plaintiff, Paul D'Antuono, as personal representative of the Estate of Linda Fenton, deceased, prays that he may have a judgment against the Defendant Bureau of Prisons and the United States of America in the amount of Ten Million Dollars (\$10,000,000) together with costs of suit and for all other relief this Court deems just, fair, and equitable.

COUNT 2.
WRONGFUL DEATH

24. Plaintiffs incorporate the above-numbered paragraphs as if fully set forth herein.

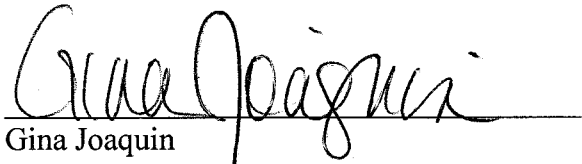
25. As a direct and proximate result of the death of Fenton, the statutory next-of-kin, including Dorothy Brown, Fenton's mother, sustained pecuniary losses, loss of companionship and society, and mental anguish.

26. This Count is brought pursuant to and is authorized by TEX. CIV. PRAC. & REM. CODE §§ 71.001 - 71.012.

27. WHEREFORE, the Plaintiff, Dorothy Brown, as statutory next-of-kin of Linda Fenton, deceased, prays that she may have a judgment against the Defendant Bureau of Prisons and the United States of America in the amount of Ten Million Dollars (\$10,000,000) together with costs of suit and for all other relief this Court deems just, fair, and equitable.

Dated this ____th day of February, 2007.

Respectfully submitted,

A handwritten signature in cursive script, reading "Gina Joaquin", written over a horizontal line.

Gina Joaquin
State Bar No. 00793051
112 Bedford Rd. #210
Bedford, Texas 76022
(817) 282-9050 Telephone
(817) 282-9070 Facsimile

Todd Duncan
State Bar No. 24012564
112 Bedford Rd. #210
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(817) 282-9070 Facsimile

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Dorothy Brown, Individually Paul D'Antuono As Personal Of The Estate Of Linda Fenton; And The Estate Of Linda Fenton (b) County of Residence of First Listed Plaintiff <u>Citrus, Florida</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS United States of America; Federal Bureau of Prisons County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Gina R. Joaquin, 112 Bedford Road, #210 Bedford, Texas 76022 817.282.9050	Attorneys (If Known) <div style="font-size: 2em; font-weight: bold;">4-07 CV - 123 - Y</div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <div style="font-size: 1.2em;">28 USC 1346(b)(1)(a)</div> <div style="font-size: 1.2em;">28 USC 2671-80</div>
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VI. CAUSE OF ACTION Brief description of cause: <u>Wrongful Death/Survival</u>	<div style="font-size: 1.2em;">28 USC 1346(b)(1)(a)</div> <div style="font-size: 1.2em;">28 USC 2671-80</div>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <div style="font-size: 1.2em;">20,000,000</div>	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) PENDING OR CLOSED (See instructions): JUDGE	DOCKET NUMBER
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DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # FW0586 AMOUNT 350 APPLYING IFP _____ JUDGE Y MAG. JUDGE _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Filing Notice - Fort Worth Division

CIVIL ACTION NO: **4-07 CV - 123-Y**

This case has been assigned to District Judge: _____

(Complete if applicable)

TRANSFERRED FROM: _____ DATE FILED: _____

Civil cases are assigned to a judge by random draw. A docket clerk for each judge maintains the recording of documents filed with the Clerk. A complete list of phone numbers for both the judges' chambers and the docket clerks is provided.

Judge	Court Settings	Pleadings Filed
(A) Judge John H. McBRYDE	(817)850-6650	(817)850-6611
Even Cases: 850-6652 Odd Cases: 850-6653		
(Y) Judge Terry R. MEANS	(817)850-6673	(817)850-6612
(BE) Magistrate Judge Charles BLEIL	(817)850-6690	(817)850-6697

For access to local rules, attorney admission information, frequently asked questions, common forms, filing instructions, and records information, please visit our web site at www.txnd.uscourts.gov. To speak to someone in the district clerk's office, please call (817) 850-6601.

To receive electronic access to court docket sheets and filed documents, contact the PACER Service Center at www.pacer.pcs.uscourts.gov or by phone at 1-800-676-6856 for a log-in and password.

Information is attached regarding trials by a United States magistrate judge, receiving electronic notice, and the court's privacy policy.